support services, nor does Qwest intend to continue providing such services for more than a limited period.

The other factors considered in *AT&T v. Ameritech* can be disposed of easily. 65/ These arrangements do not put Qwest in the position of holding itself out as a provider of in-region long-distance service. To the contrary, Qwest is taking multiple precautions to avoid giving customers any mistaken impressions. Nor do these arrangements place Qwest in the position of performing the core functions typically provided by carriers for themselves. Touch America will be purchasing the types of services from Qwest that carriers routinely out-source: billing and collection, contractor technicians and customer service representatives, and the like.

In short, the transitional support services do not in any way reduce Qwest's incentives to achieve interLATA authorization under Section 271.

IV. QWEST AND TOUCH AMERICA HAVE NO JOINT OR COOPERATIVE MARKETING ARRANGEMENT

The *Qwest-U S WEST Merger Order* states that "a divestiture arrangement that includes a joint or cooperative marketing or sourcing agreement, coupled with in-region customer support services and out-of-region long distance" would be problematic. 66/ The divestiture arrangement between Qwest and Touch America

65/ *Id.*, 13 FCC Rcd at 21474-75, ¶ 50.

66/ *Qwest-U S WEST Merger Order*, ¶ 23.

includes no joint or cooperative marketing or sourcing agreement of any kind. 67/ Nor are there any "tacit or side agreements" regarding such marketing. 68/

To be sure, Qwest intends to continue providing interLATA services out-of-region. Qwest expects that in some cases it will coordinate its offering of those services with the in-region interLATA services offered by various providers, so that Qwest can sell the out-of-region portion of national service packages to national customers. Qwest intends to discuss such possible arrangements with a number of carriers other than Touch America.

Any coordinated marketing that may occur in the future would be done pursuant to the policies under which BOCs engage in such marketing today. Coordinated marketing of authorized services offered by BOCs with services offered by other carriers is amply supported by precedent, and is no different from arrangements that BOCs have routinely entered into since divestiture. Coordinated marketing with unaffiliated interexchange carriers, in and of itself, does not constitute "providing" interLATA service under Section 271 or the Commission's "totality of the involvement" test. 69/ The coordinated marketing that

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67/ As discussed in Section V below, special arrangements exist for the provision of calling card, prepaid card, Internet/GSP, and operator services.

68/ *Qwest-U S WEST Merger Order*, ¶ 23.

69/ *AT&T v. Ameritech*, 13 FCC Rcd at 21463, 21465-66, ¶¶ 32, 37 (1998). As the Commission recognized in *AT&T v. Ameritech*, the term "market" in Section 271 of the Act does not mean the same thing as "provide." *Id.* at 21463, ¶ 32 & n.121. Thus, marketing of in-region interLATA services by a BOC prior to obtaining

[footnote continues]

Qwest is contemplating here – the coordinated marketing of out-of-region interLATA services with another carrier's in-region interLATA services – also is very different for Section 271 purposes from coordinated marketing that involves a BOC's in-region local exchange service. 70/ As the Commission made clear in *AT&T v. Ameritech*, the real concern under Section 271 is a BOC's use of its existing leverage in the local exchange market in-region to prematurely enter the in-region long distance business through one-stop shopping. 71/

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interLATA authority is not *per se* prohibited by the Section 271. *See id.* at 21474, ¶ 50 ("[W]e believe that an arrangement in which a BOC would offer the services of its marketing department to market and sell a long distance product or service would be one example of a permissible marketing arrangement."). In fact, in the 1996 *Non-Accounting Safeguards Order*, the Commission seemed to expect that BOCs would engage in such coordinated marketing arrangements with unaffiliated interexchange carriers. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Report and Order, 11 FCC Rcd 21905, 22047, ¶ 293 (1996), *aff'd on other grounds sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997) ("*Non-Accounting Safeguards Order*").

70/ *See AT&T v. Ameritech,* 13 FCC Rcd at 21463, 21474, ¶ 32 & n.121, ¶ 50. The issue for Section 271 purposes is whether coordinated marketing, together with other factors, would lead the Commission to conclude, based on a totality of the circumstances, that a BOC is in fact "providing" interLATA service.

71/ *AT&T v. Ameritech,* 13 FCC Rcd at 21466-67, ¶¶ 38-39. *See also AT&T Corp. v. BellSouth Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 8515, 8572, ¶ 25 (Com. Car. Bur. 1999) ("*AT&T v. BellSouth*") (concluding that BOC issuance of prepaid calling cards for in-region interLATA service does not constitute "provision" of service under the totality of the circumstances test, in part because the card "does not capitalize on, or directly utilize, the company's local market customer base," citing *AT&T v. Ameritech*, 13 FCC Rcd at 21453-54, ¶ 16).

More significantly, such arrangements would in no way diminish Qwest's incentives to obtain Section 271 interLATA authorization. In marketing its out-of-region services (even in collaboration with unaffiliated in-region carriers), Qwest will be at a significant disadvantage to other carriers that can offer service on a nationwide basis. Coordinated marketing does not permit Qwest to "fill the hole in the doughnut" of its service territory. To the contrary, one or more independent carriers providing in-region services would receive the entire benefit – in terms of revenue – of providing service in-region (in the "hole"). The co-marketing described here would simply enable Qwest to continue providing service *out-of-region* (*i.e.*, retaining the "doughnut" itself). Its ability to win even that out-of-region business will be severely hampered – even with coordinated marketing – until Qwest can itself provide a nationwide service offering over an integrated network. 72/

72/ *See* Qwest-U S WEST October 18, 1999 Response to Comments on Applications for Transfers of Control, CC Docket No. 99-272, Attachment B (Declaration of Bruce M. Owen) at 8, 11-12:

> If the combined company could serve the "hole" in the doughnut it would have greater revenues and lower costs. Its revenues would be greater because of direct sales opportunities in the fourteen-state region and because it could offer a more attractive nationwide service to customers in all parts of the country.
>
> [M]any customers prefer to deal with a single long distance provider that can offer national service on an integrated basis. . . . Single source procurement of telecommunications services offers a number of advantages for large companies and other entities.

[footnote continues]

In this respect, Qwest's incentives to win Section 271 authority are by definition no less than those of the other RBOCs – in fact, they are greater. Post-merger, U S WEST will have added incentives to win interLATA approval that other RBOCs do not have, because post-merger U S WEST will have acquired an interLATA network that it cannot use to provide service to its large in-region customer base until it obtains interLATA approval. 73/

In any case, whatever the Commission's general views of coordinated marketing by RBOCs, the issue is not ripe for decision here. We reiterate that Qwest has not entered into any coordinated marketing agreement, and does not plan to engage in coordinated marketing, with Touch America.

V. SPECIAL PRODUCT ARRANGEMENTS

Qwest and Touch America have agreed to special arrangements for certain distinctive products: (1) calling cards, (2) prepaid cards, (3) Internet and other information services, and (4) operator services. In all of these cases Qwest will have no involvement in determining Touch America's prices for in-region services. While some of these arrangements will involve broader support services than those discussed above, in all communications with customers the carriers will consistently make it clear that Touch America (not Qwest) provides in-region interLATA services. These arrangements are based on common practices in the

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73/ *See id.* at 9-10.

industry and are supported by MFJ and/or FCC precedent. Unlike the arrangements at issue in *AT&T v. Ameritech*, none of the arrangements discussed here involves a combined in-region package of local and long distance services, and Qwest will not receive a material benefit from any such combined service package.

A. Calling Cards

1. Description of and Need for the Arrangement

Qwest will continue to provide long distance service, including calling cards, to out-of-region customers. Qwest has a practical issue, however, because post-merger it will not be allowed to complete calls placed by its out-of-region long distance calling card customers when they travel into the 14-state U S WEST region. To address this problem, Touch America has agreed to carry calls of Qwest's out-of-region calling card customers when they travel to the 14 U S WEST states and place calls using their calling cards. Touch America will provide all transport associated with these calls, regardless of whether the calls terminate in-region or out-of-region. The calls will be charged to customers at Touch America's tariffed rates, which Qwest will have no ability to determine or influence.

Similarly, the in-region customers who are transferred from Qwest to Touch America as part of the divestiture will receive new calling cards branded as "Touch America," which will be supported using the support services that Touch

America procures from Qwest. 74/ Touch America has the right, but not the obligation, to have additional customers' calling cards supported under this arrangement as well, for the term of the Transition Services Agreement. 75/

All out-of-region Qwest customers will receive notice that, in the future, Touch America will handle their calling card calls in the 14 U S WEST states. Qwest calling cards provided to new out-of-region customers, and new calling cards re-issued to pre-divestiture Qwest customers in the ordinary course of business, will include a disclosure that Touch America will provide service in those states where Qwest is not authorized to provide service. Thus, customers will have clear notice that Touch America, not Qwest, is the provider of the in-region interLATA service.

The term of the calling card arrangement extends until the latest of the following three events: (1) the expiration of the service contracts of all pre-

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74/ When these in-region customers travel out-of-region and use these cards, the calls will be handled by Qwest, and Qwest will bill the customers its tariffed rates for those calls. (This arrangement carries out the parties' intent that *in-region* – but not *out-of-region* – long distance services and revenues would be conveyed from Qwest to Touch America as part of the divestiture transaction). Subsequent to the divestiture, Touch America is free to issue calling cards to its existing or new customers that could provide for all calls, both in-region and out-of-region, to be handled by Touch America. The parties do not have any non-compete agreement in this regard.

75/ Commercial customers with both in-region and out-of-region locations, and that therefore have continuing relationships to both Qwest and Touch America, will receive new Touch America-branded calling cards only if more than 50% of their

[footnote continues]

divestiture Qwest customers that were transferred to Touch America; (2) the date upon which Touch America ceases to use the data processing services provided under the Transition Services Agreement; or (3) Qwest obtains interLATA authority under Section 271 in all in-region states. With respect to out-of-region Qwest customers, Qwest has the option to begin providing services itself for a particular state once Qwest obtains interLATA relief for that state.

2. Support Services in Connection with the Arrangement

Qwest will provide billing and collection service to Touch America in connection with Touch America's provision of service to Qwest's out-of-region calling card customers. 76/ For out-of-region long distance customers on whose ILEC bills Qwest charges appear, Touch America charges will also appear on those ILEC bills in any month when an in-region calling card call is placed. For customers who are direct-billed by Qwest, Touch America's charges will appear on out-of-region customers' Qwest bills in separate sections of the bills that clearly identify the services provided by Touch America and that clearly identify Touch America as the service provider.

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revenues were in-region on the revenue statement immediately prior to the divestiture closing date.

76/ Qwest will also provide this and the other support services described in this section to Touch America in connection with in-region card calls of customers transferred to Touch America.

In order to comply with the FCC's Truth-in-Billing rules, Qwest will ensure that its out-of-region direct-billed customers receive invoices that clearly and conspicuously identify the name of Touch America, and that separate the charges imposed by Touch America in a section of the bill separate from the Qwest charges. 77/

Under the recent reconsideration order in the Truth-in-Billing proceeding, the requirement that telephone bills "provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service" does not apply to Touch America's role in this arrangement. 78/ In this arrangement, Touch America will not "have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill" from Touch America, but rather, these customers will only receive services from Touch America "billed solely on a per-transaction basis" on occasions when they travel away from their home areas (out-of-region) to in-region states. 79/ Nonetheless, Qwest will go beyond the letter of the rule, and will provide advance notification to all its out-of-region customers that, following the divestiture date, their calling card calls placed from the 14 states of the U S WEST region will

77/ 47 C.F.R. § 64.2001(a)(1) & (2).

78/ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Order on Reconsideration, FCC 00-111, ¶ 3 (released March 29, 2000).

79/ *Id.*; 47 C.F.R. § 64.2001(a)(3).

be handled by Touch America, and that Touch America's charges may appear on future invoices.

In addition to billing and collection, Qwest will provide calling card platform services to Touch America. These platform services, provided out of Qwest's call centers, include toll-free numbers for customers to initiate calling card calls, and automated call processing and routing. Touch America will be responsible for all transport into and out of the platform (using its own facilities, wholesale out-of-region services procured from Qwest, or other facilities depending on its independent network planning decisions). All platform services that Qwest provides on behalf of Touch America to customers calling from in-region locations will be branded "Touch America," including the automated "bong" tone that customers hear when they place calls from in-region locations. (Software will be deployed, using information about the calling party's automatic number identification ("ANI") code to determine the customer's location, to make sure that callers from out-of-region locations hear the "Qwest" brand, and callers from in-region locations hear the "Touch America" brand.)

3. The Arrangement is Consistent with Section 271 and Applicable Precedents

This arrangement complies fully with Section 271. At the most fundamental level, Touch America's provision of calling card service to Qwest's out-of-region customers is consistent with Section 271 because Touch America, not Qwest, will provide all in-region interLATA service. Indeed, BOC provision of calling cards that facilitates access to in-region long distance was upheld long ago under the MFJ. 80/

Moreover, the arrangement fully complies with *AT&T v. Ameritech.* Like the BellSouth prepaid card service upheld by the Bureau in *AT&T v. BellSouth,* this is not a case in which a BOC would "market a [calling] card in a manner that entrenched its local market share or effectively pre-positioned itself in the long-distance market, [which] might ... violate[ ] section 271." 81/

A close analysis shows that this calling card arrangement fully complies with each of the standards articulated in *AT&T v. Ameritech.* First, Qwest will receive no material benefit uniquely associated with the ability to include an in-region long distance component in a local offering. To the contrary, this arrangement poses a material detriment to Qwest because, unlike all other long distance carriers operating in the 36 out-of-region states, Qwest will not be able to handle all of its customers' calls across the nation – and it will inform its customers of this fact. Qwest will receive no revenue when Qwest calling card customers travel in-region and place calls handled by Touch America.

Second, Qwest will not effectively hold itself out as a provider of in-region long distance service. Customers will receive advance notice that Touch

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80/ *United States v. Western Electric Co., Inc.*, 698 F. Supp. 348, 353 (D.D.C. 1988). *See also infra* note 82.

81/ *AT&T v. BellSouth,* 14 FCC Rcd at 8528-29, ¶ 27.

America, not Qwest, provides such service, through bill inserts and a printed legend on the calling card. When charges for these calls appear on the customers' bills, the charges will appear under the Touch America name in a separate section of the bill from Qwest charges.

Third, Touch America – not Qwest – will perform all the activities and functions typically performed by carriers that are legally and contractually responsible for providing the service. Touch America will have total control, and Qwest will have no control, of the tariffed rates for this service. Touch America will provide all transmission functions associated with this service. The only support services to be provided by Qwest are those typically provided by outsourcing vendors, such as billing and collection, computer software and system support, and operator personnel.

Finally, Touch America's provision of in-region interLATA service to Qwest calling card customers does nothing to reduce Qwest-U S WEST's incentives to cooperate in opening its local market to competition and obtain interLATA authorization under Section 271. If anything, the fact that Qwest will be deprived of the revenues from calling card calls placed by its *out-of-region* customers heightens its incentives to obtain Section 271 authorization. This arrangement highlights one of the key public interest benefits identified by the Commission in the *Qwest-U S WEST Merger Order*: "in order to be more competitive in its out-of-region long distance service, and obtain maximum growth in its out-of-region business, Qwest will need to affirmatively pursue the legal ability to offer in-region long distance." 82/

In sum, Touch America's provision of in-region long distance service to Qwest's out-of-region calling card customers clearly complies with Section 271.

B. Prepaid Card Services

1. Description of and Need for the Arrangement

Before describing the prepaid card arrangement that Qwest has entered into with Touch America, it is important to describe the prepaid card business, and explain how it differs from ordinary telephone calling cards and other more familiar long distance services.

Prepaid card services differ in significant respects from ordinary telephone calling cards. First, long distance companies typically distribute calling cards primarily to their presubscribed customers, but prepaid cards are distributed in a completely different way. Qwest's prepaid business in large part involves the

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82/ *Qwest-U S WEST Merger Order* at ¶ 57. Notably, this arrangement raises no equal access issue under Section 251(g) of the Act. Calling cards are offered ubiquitously by a host of long distance companies and other entities, and all card providers have equal access to the LECs' exchange access services. Moreover, Qwest is not even a LEC subject to Section 251(g)'s equal access or non-discriminatory access obligations. Section 251(g), by its explicit terms, applies only to "local exchange carriers' " provision of wireline local services (*i.e.*, "exchange access, information access, and exchange services"). By contrast, this arrangement does not involve any local exchange carrier or any local service; it involves a calling card that gives customers access to Qwest's non-dominant out-of-region inter-exchange service and Touch America's non-dominant in-region interexchange service.

sale of cards and card services to other common carriers, as well as to non-carrier distributors such as gas station chains, convenience store chains, and other third parties. Qwest provides the PIN codes and the underlying transport and platform services ,and the card purchasers distribute and sell the cards to end users. Qwest's name always appears somewhere on the prepaid cards, but in a significant proportion of cases, these distributors place their own names as the most prominent brand on the cards, with Qwest's name appearing in "fine print" on the back of the card.

Second, the pricing relationship for prepaid cards in this situation is completely different from that for ordinary calling cards or other telecommunications offerings. For calling cards, carriers set their rates to end users unilaterally. By contrast, the prepaid card distributor plays a much more significant role. Typically, the carrier or non-carrier distributor will specify the retail card that it wishes Qwest to supply and support (cards can be either dollar-denominated, such as a $20 card, or marked with a fixed number of minutes, such as a 60-minute card). Sellers of prepaid cards will vie to offer such products based in part on the discount that they will give the distributor: for example, the distributor may agree to pay the prepaid card company $15 per card for prepaid cards with a $20 retail face value. In all events, the card distributor plays a much more significant role in determining the final price that the end user pays for telecommunications services. In this environment the prepaid company's revenues are based principally on the amounts paid by card distributors, who sell the cards to end users. The discount off the face value of the card is essentially a charge for marketing.

Finally, Qwest also markets prepaid cards directly to end users in some cases. But even then purchasers of prepaid cards have a much more indirect or attenuated relationship with the carriers that provide the telecommunications service than is the case with convential long distance service. Prepaid card customers pay in advance for a specified amount of calling time, and their relationship to the carrier is only as long as the minutes covered by the card. When a call is placed using a prepaid card, the call is first routed to a "platform" that computes how much credit should be deducted from the balance remaining on that card. If there is no value left on the card, the call will not go through.

Qwest currently sells and services prepaid cards that enable customers to place calls from anywhere in the country. Post-divestiture, Touch America will take over the in-region component of Qwest's prepaid calling card offerings. Prepaid cards sold in the past will continue to work, but Touch America will provide the in-region telecommunications service to existing cardholders. Going forward, prepaid cards (and accompanying point-of-sale materials) will identify Touch America as the in-region provider and Qwest as the provider elsewhere. Touch America will be fully responsible for providing the transmission services that enable in-region prepaid card calls to be completed.

The arrangement will be managed to ensure that each carrier ultimately receives revenue based on telecommunications services it respectively provides. Qwest and Touch America will conduct a "true-up" process monthly, and Touch America will receive a share of the prepaid card revenues corresponding to the in-region service that it provides. Specifically, revenues (consisting primarily of revenues from distributors purchasing the cards, as well as any retail revenue) will be allocated between Touch America and Qwest based on the number of in-region versus out-of-region minutes on the platform during the month. Qwest will deduct a specified amount for the cost of the support services and remit the balance due to Touch America.

Since Touch America has absolute discretion over its own in-region rates (subject to assumption of existing contract obligations as of closing), and since commercially competitive products typically will have the same rate regardless of the region of origination, as a practical matter Qwest will by necessity defer to Touch America, and set its out-of-region rates to match Touch America's in-region rates. This will be implemented by having Touch America, on the first day of each month, supply the rate table governing the rates for both carriers' services. Touch America must use commercially reasonable efforts to set rates that will be competitive, and is solely responsible for determining whether to allow deviations from the standard rate table in the context of negotiations with an individual distributor. 83/ This will ensure that Qwest plays no role in setting Touch America's in-region rates. Moreover, as discussed above, distributors generally play a much more significant role in determining the rates paid by the ultimate end-user (who is the consumer of telecommunications service) in the prepaid context.

2. Support Services in Connection with the Arrangement

Touch America will buy certain prepaid card support services from Qwest. These support services include the printing and distribution of cards and use of the third-party "platform" located out-of-region in Cincinnati, Ohio, that processes prepaid card calls (*i.e.*, calculates the amount of credit left on the card and debits from the balance based on card usage, completes calls as dialed, provides operator assistance when requested, etc.). All live and automatic customer service provided to end-users in connection with prepaid cards will be generic (*i.e.*, unbranded). It should be noted that, while the platform is provided by a third party, it is impractical for Qwest to assign the arrangement in part to Touch America, due to the nature of the prepaid card arrangement. 84/ In addition, Qwest will provide Touch America with contract management services with card distributors. 85/

83/ *See* Prepaid Calling Card Services Agreement (Agreements Tab IV-B), § 4.1.

84/ Qwest also already resells the non-telecommunications services of this platform provider to other major carriers, including one of the other Bell operating companies and the U.S. affiliate of one of the largest European-based carriers.

85/ *See id.* § 4.2. In addition, Qwest will provide merchant customer service to card distributors on Touch America's behalf. *Id* at § 5.2.

The prepaid card arrangement described above will be limited to a two-year term. 86/ Unlike most of the other arrangements entered into in the context of the divestiture, Qwest will have the right, upon 60 days notice to Touch America, to resume providing prepaid card service in any given state once U S WEST obtains interLATA authorization under Section 271.

3. The Arrangement Is Consistent With Section 271 and Applicable Precedents

The Commission has already had the opportunity to review an arrangement in which a BOC marketed a prepaid card in-region, where the in-region telecommunications service was provided by an independent interexchange carrier. 87/ The Common Carrier Bureau held that BellSouth's arrangement did not violate Section 271, because unlike the arrangements at issue in *AT&T v. Ameritech*,

> BellSouth does not obtain material benefits uniquely associated with the inclusion of a long-distance component in the Card's services. Given the limited relationship between BellSouth and its prepaid card customers, the Card, in its current structure, will not permit BellSouth to accumulate a cache of entrenched customers with which it could jumpstart its long-distance business once it receives section 271 authority. . . . Nor does the Card . . . permit BellSouth to make effective inroads into that broad portion of the [presubscribed long-distance] market. 88/

86/ *Id.* at § 8.1.

87/ *AT&T v. BellSouth*, 14 FCC Rcd 8515 (1999).

88/ *Id.* at 8534, ¶ 38.

To be sure, the arrangement described above differs in certain respects from BellSouth's arrangement. Most critically, unlike BellSouth, Qwest will provide the out-of-region services on the prepaid cards, consistent with Section 271(b)(2). Nonetheless, the arrangement at issue here shares the same attributes that, in the context of the BellSouth card, led the Bureau to conclude that the arrangement was consistent with Section 271.

C. Internet-Based Information Services

As described in detail below, Qwest plans to continue providing Internet access, web hosting, and other Internet-based information services to in-region customers. Qwest will provide these services, but will no longer provide any interLATA transmission service used in connection with the service. That interLATA transmission will be unbundled and sold separately to the end user by a Global Service Provider ("GSP"). 89/

89/ This section of the Report responds to the Commission's requests for information regarding "the Applicants' post-divestiture use of in-region Internet backbone," "a complete explanation as to whether or how the merged company will continue to operate its Internet backbone network without originating any Internet traffic in the 14-state U S WEST region," and for "an explanation as to how the merged company will dispose of Internet addresses and web-hosting servers for their Internet customers." *Qwest-U S WEST Merger Order* at n.8, ¶ 25, & n.83. As discussed here, Qwest will not provide any in-region interLATA transmission used in connection with Internet service post-merger. To the extent that any of its out-of-region activity might be considered operation of an "Internet backbone," that activity will not occur in-region.

1. Description of and Need for the Arrangement

a. The Architecture of Qwest's Current Facilities-Based Internet Services

In order to explain the arrangements necessary to ensure that Qwest's post-merger Internet services comply fully with Section 271, it is useful to describe how Qwest provides Internet access and other Internet-related services at present (pre-merger). Qwest's current Internet service offerings are focused on medium to large business customers (although Qwest also serves residential and small business customers). Qwest offers these customers dedicated Internet access and digital subscriber line ("DSL") based Internet access services, as well as web hosting, multimedia, and application hosting services. 90/

The Internet services that Qwest provides to its customers are *information* services that give these customers "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 91/ When the customers seek to *retrieve information* (for example, a "mouse click" requesting data from a web site that is hosted on a remote server) or to *make available information* (for example,

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90/ A very small minority of Qwest's Internet-related business consists of dial-up Internet access. *See infra* note 94.

91/ 47 U.S.C. § 153(20); *see Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11536-40 at ¶ 73-82 (1998) ("*Universal Service Report*"); *see also Non-Accounting Safeguards Order*, 11 FCC Rcd at 21967, ¶ 127 & n.291; *Bell Atlantic Telephone Cos. v. FCC*, 2000 WL 273383, No. 99-1094 (D.C. Cir. March 24, 2000).

making available data from the customer's web page to a requesting party elsewhere on the Internet), they do so *via telecommunications.* The *information* that Qwest's large business customers *store, retrieve, or process via telecommunications* – in the form of data packets in the Internet protocol ("IP") format – typically pass over dedicated, high-speed local connections between customer premises and a local Qwest IP router.

Like all IP routers, Qwest's routers forward the data packets in the most efficient manner available based on the ultimate *destination* point. Thus, today Qwest's routers could forward the data in one of three ways.

- First, if the remote web server happens to be located on Qwest's network (or on a customer-owned server that is directly linked to one of Qwest's routers), the local Qwest router may forward the data packets over Qwest transmission facilities, to the remote Qwest router that is connected to the server. This enables the customer to retrieve the information he is requesting from the remote Qwest-hosted server. Today, this situation is quite rare, however, given that Qwest provides only slightly over 1% of the business Internet service in the country.

- Second, and much more likely, the requested data may be located on a server that is linked to some other Internet service provider's network. Routing then would be heavily influenced by which ISP hosts the remote web page, and Qwest would connect with that ISP's network at the earliest practical point. The Qwest customer's data packets could travel from the customer, to the local Qwest router, via local interconnection facilities, directly to the routers and transmission facilities of another Tier 1 Internet service provider. If the remote e-mail server or web site server is on this provider's network, the provider will route the data packets to the destination point, enabling the Qwest user to retrieve the requested data. Qwest is considered a Tier 1 Internet service provider, and has high-capacity interconnections with about 50 other Tier 1 providers. Qwest has "private peering" relationships with these providers (*i.e.*, both Qwest and the other Tier 1 providers exchange data and do not charge one another for such interconnections in a "bill and keep" arrangement). 92/

- Third, a combination of the two routing patterns described above may be employed. Thus, the packets may travel from the local Qwest router, via inter-city Qwest transmission facilities, to another Qwest router in another city, which in turn may hand the packets, via a local "peering" interconnection arrangement, to the router of another Internet service provider.

Under any of these scenarios, the data packets that the remote server transmits back to the Qwest customer may be transmitted over the same, or a completely different, transmission path, but ultimately will arrive at the local Qwest router that passes the data to the customer.

As a Tier 1, national Internet service provider, Qwest provides its customers the total capability to store, retrieve, make available, and process information via telecommunications over the Internet using a number of computing and transmission facilities: (a) six hosting centers, which Qwest refers to as "Cyber Centers," consisting of groups of servers capable of storing and making available customers' web sites and other information; (b) fourteen sets of routers, which Qwest refers to as "Tera-POPs," across the country; (c) "peering" interconnection facilities between these routers and the routers of other Tier 1 Internet service providers; and (d) a network of very high-speed (OC-48) inter-city fiber transmission facilities linking Qwest's Tera-POPs together. These transmission facilities include some interLATA transmission facilities that have one or both ends located in the

92/ *Cf.* 47 U.S.C. § 252(d)(2)(B)(i).

U S WEST region – in particular, the transmission facilities connecting to Qwest's Tera-POPs in Denver and Seattle.

b. Qwest's GSP Arrangements Are Modeled On Those of the Other BOCs

From the time the merger closes until Qwest-U S WEST obtains interLATA authority under Section 271, Qwest's in-region facilities will not be used to transmit prohibited interLATA communications. Qwest will continue to provide information services as well as the out-of-region interLATA transmission services permitted under Section 271(b)(2), and Qwest customers located in-region still will be able to purchase information services (*i.e.*, the capability to store, retrieve, process, and make available information) from Qwest. But these customers will have to procure from another provider -- in most cases, Touch America -- the interLATA transmission necessary to connect their in-region locations to Qwest's largely out-of-region information service.

Qwest's GSP arrangements, in which consumers will purchase information services such as Internet access from Qwest while purchasing interLATA transmission service needed for those services from an independent GSP, are modeled closely on the existing arrangements of the other BOCs. Each of the BOCs, including U S WEST, currently provides Internet access service in connection with one or more GSPs that separately sell customers the underlying interLATA transmission associated with those Internet services.

The GSP arrangement separates the in-region interLATA telecommunications services that are barred by Section 271 from those activities in which a BOC may lawfully engage. The GSP provides the former. The BOC or BOC affiliate, in turn, provides only the services that it is permitted to provide. 93/ Millions of Americans currently receive Internet access services structured under the GSP arrangement.

The GSP operates independently of the BOC affiliate. It sets the rates for its own services independently from the BOC affiliate, and contracts separately with the customer to provide those services. It is solely responsible to the customer for the provision of its services. The GSP is paid for its services only by end users – not by the BOC affiliate – and the GSP retains all of its revenues. The GSP typically buys billing and collection services from the BOC affiliate and pays, as others do, for those services.

Qwest has made arrangements with two different GSPs. Concentric Network Corp. ("Concentric") will provide service as the GSP for the approximately 2,600 customers in-region to whom Qwest provides dial-up Internet access service

93 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, FCC 00-26, at ¶ 24 & nn. 75, 81 (released Feb. 11, 2000) ("*LATA Modification Order*"); *Bell Atlantic Telephone Cos. Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, 11 FCC Rcd 6919 (CCB 1996) ("*Bell Atlantic CEI Order*").

(as well as for future dial-up customers). 94/ Touch America will be the GSP for in-region customers of other Internet services offered by Qwest, including dedicated and DSL-based Internet access as well as web hosting services.

While the contractual and economic relationships in Qwest's GSP arrangements with Concentric and Touch America will be identical to those of the other BOCs, the physical set-up of the Touch America arrangement will be tailored to reflect the fact that Qwest is a Tier 1 Internet service provider. Qwest will continue to own and operate Internet routers, "private peering" interconnection arrangements, and out-of-region transmission facilities. Qwest also will continue to operate its in-region Tera-POPs in Denver and Seattle, and is also setting up smaller in-region routers, which it refers to as Mega-POPs, in Minneapolis, Phoenix, Portland, and Salt Lake City.

Touch America will sell customers all in-region interLATA transport service in connection with this arrangement. Specifically, Touch America, as the GSP, will provide to customers in-region interLATA basic data transmission service among Qwest's in-region Tera-POPs and Mega-POPs, and between its in-region Tera-POPs (in Denver and Seattle) and its out-of-region Tera-POPs (in Chicago,

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94/ Qwest currently provides this dial-up Internet access service by buying such service wholesale on a private-label basis from Concentric and reselling it to Qwest customers. Qwest will continue to purchase the information service and out-of-region transmission elements of dial-up Internet access service from Concentric on a wholesale basis and resell those elements to Qwest customers. But post-divestiture,

[footnote continues]